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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/740,821 | 12/21/2000 | Daniel C. Carter | P06896US00/BAS | 6567 |
| 881 | 7590 | 11/19/2003 | EXAMINER | |
| LARSON & TAYLOR, PLC 1199 NORTH FAIRFAX STREET SUITE 900 ALEXANDRIA, VA 22314 | | | LIU, SAMUEL W | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1653 | |

DATE MAILED: 11/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 09/740,821 | Applicant(s) CARTER, DANIEL C. | |
| | Examiner Samuel W Liu | Art Unit 1653 | |

-- **Th MAILING DATE of this communication appears on the cover sheet with the corresponding address --**

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-36 is/are pending in the application.
- 4a) Of the above claim(s) none is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28-30 and 34-36 is/are rejected.
- 7) ☒ Claim(s) 31-33 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

DTAILED ACTION

The response filed 11 September 2003, which cancels claims 1-27 and adds claims 28-36 has been entered. Also, applicant's request for extension of time of three months has been entered. The following pending claims 28-36 are examined in this Office action.

Claim Objection

Claims 31-33 are objected to as being dependent upon a rejected base claim, i.e., claim 28 (see below).

Claim Rejections - 35 USC § 112, first paragraph

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 29 and 34-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 29 recites "in the form of "shampoo, cream, soap ...". Note that soap is a cleaning agent not a physical form thereof. Thus, the recitation "soap" is an improper limitation to the claim as opposed to shampoo or cream which is a physical form as the composition formulated.

Claim 30 recites "recombinant serum albumin"; yet, without reciting the article "a" before "recombinant ...", the recitation is indefinite since, alternatively, the recited albumin can refer to plural compositions instead. See also claim 36 and claim 34 wherein it is not clear whether or not "a" is missing before "human serum albumin". The dependent claims are also rejected.

Claim Rejections - 35 USC §102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The claims 28-30 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Kligman, A. M. (EP 0244859).

Kligman teaches a conditioning composition for skin that comprises human serum albumin (see abstract and claims 1 and 5) which is in a form of a lotion (see page 3, lines 33-38), as applied to claims 28-29 of the current application. Note that claim 30 is also anticipated by the Kligman's reference since the reference teaches human serum albumin is recombinantly produced in bacteria or yeast (see page 2, lines 25-26).

Also, Kligman teaches the composition comprising the HSA protein that is in glycerin solution (see the patent claim 8) of a concentration in the range of about 5-50% by weight (see the patent claim 4), as applied to claim 33 of the instant application.

The claims 28-30, 33 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Miller, D. G. (EP 0180968).

Miller teaches an anti-wrinkle cosmetic composition comprising *human* serum albumin (HSA) protein (see abstract and claims 1 and 7-10) wherein the albumin is derived from expressing a cloned gene for HSA, *i.e.*, recombinant albumin, (see abstract and claims 1, 7 and 8), as applied to claims 28, 30 and 36 of the current application.

Miller teaches a composition comprising the HSA protein (see abstract and claims 1 and 5) which is in a form of a lotion (see page 4, lines 13-17). The Miller's teaching is thus applied to the application claim 29.

Also, Miller teaches the HSA protein is dissolved in a glycerin solution (see page 3, lines 8-11) wherein the HAS concentration is in the range 5-50% by weight, as applied to claim 33 of the instant application.

Response to the rejection under USC 35 102(b)

The response filed 11 September 2003 argues that Kligman's patent only relates to cosmetic composition and not to a conditioning or moisturizing or cleaning composition as set forth in the current application, and also asserts that Kligman's composition lacks the cleaning function. The applicant's arguments has been fully considered but they are not persuasive because the Kligman's cosmetical composition is a typical conditioning composition for the skin, e.g., useful for smoothing (*i.e.*, conditioning) of the skin (see abstract) and because the application claims are not solely directed to the composition for cleaning, *i.e.*, the claims per se (see "or" between cleaning, moisturizing and conditioning as opposed to "and" recitation) do not preclude the composition for conditioning skin. Thus, Kligman's patent is applicable to the claims mentioned *supra*.

In addition, the response filed 11 September 2003 argues the same (see the above response) with regard to the cleaning activity of the composition of Miller's patent. The applicant argument has been considered but it is unpersuasive because of the reason stated

Conclusion

No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel Wei Liu whose telephone number is (703) 306-3483. The examiner can normally be reached from 9:00 a.m. to 5:30 p.m. on weekdays. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Christopher Low, can be reached on 703-308-2923. The fax phone number for the organization where this application or proceeding is assigned is 703 308-4242 or 703 872-9306 (official) or 703 872-9307 (after final). Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 305-4700.

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Samuel Wei Liu, Ph.D.
October 28, 2003

Karen Cochrane Carlson
KAREN COCHRANE CARLSON, PH.D.
PRIMARY EXAMINER